



# HOUSE OF REPRESENTATIVES

SB 1510

juveniles; life sentence; parole

Prime Sponsor: Senator Driggs, LD 28

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**X** Committee on Judiciary

Caucus and COW

House Engrossed

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## **STRIKE EVERYTHING SUMMARY**

The strike-everything amendment establishes a process to commit a person who is found incompetent to stand trial and additionally found to be *dangerous* to the Arizona State Hospital (ASH). The amendment provides additional notice to the court and prosecutor for persons subject to civil commitment and court-ordered treatment as the result of a finding that the person is incompetent to stand trial and provides an option to screen persons who are believed to be sexually violent persons (SVP) during the competency process.

## **PROVISIONS**

### ***Dangerous and Incompetent Defendants***

#### **Initial Process**

1. Expands A.R.S. Title 13, Chapter 41 (Incompetence to Stand Trial) to include a process for determining if a person is *dangerous* and should be subject to commitment.
2. Permits the state to request a hearing to determine if a defendant who is found to be not restorable to competency is *dangerous* and should be involuntarily committed.
  - a. The person must be examined by mental health experts.
  - b. The state must establish by clear and convincing evidence that the defendant:
    - i. Is *dangerous*; and
    - ii. Committed acts that constitute the charged offense.
3. Requires the court to order the defendant to be committed to a secure state mental health facility if the court finds the defendant *dangerous*.
4. States that the defendant must receive education, care, supervision and treatment to make the defendant competent or non-dangerous.
5. Requires the defendant to remain committed until:
  - a. The court finds the defendant competent to stand trial;
  - b. The court finds the defendant is no longer *dangerous*; or
  - c. The amount of time the defendant would have been sentenced for the offense has passed.
6. States that the court retains jurisdiction over the defendant until the defendant is discharged from treatment by the court.
7. Requires the Director (Director) of the Department of Health Services (DHS) to determine the extent of private or public benefits available to be applied to the expenses of the defendant's maintenance and treatment.
  - a. DHS is allowed to accept these monies without a court order.

- b. DHS is responsible for all remaining costs associated with the commitment.
- 8. Permits the use of any statement by a defendant during an examination or evidence resulting from a statement by any party in a hearing to determine if the defendant should be committed as *dangerous*.
- 9. Allows reports that are otherwise sealed at the conclusion of the case to be ordered open by the court for purposes of a hearing to determine if the defendant is *dangerous* or eligible for court-ordered treatment.
- 10. Requires the report submitted by an expert who examines the defendant to include a description of the nature, content, extent and results of any instrument or tool used to assess if the defendant is likely to be *dangerous*.
- 11. Requires the report to include the following information if the expert determines the defendant incompetent to stand trial:
  - a. The nature of the mental health disorder, disease or defect or of any personality or other disorder that makes the defendant likely to be *dangerous* or a sexually violent person; and
  - b. Whether the defendant should be considered *dangerous* or may be an SVP, if the prognosis includes a determination that there is no substantial probability that the defendant will regain competency within 21 months of the original finding of incompetency.
- 12. Permits the medical supervisor to file a petition stating that the defendant requires involuntary commitment because the defendant is *dangerous* if the defendant is discharged or released on the expiration of treatment orders or renewal orders.
- 13. Allows the court to hold a hearing to determine if a defendant is *dangerous* and should be involuntarily committed if the defendant is not likely to regain competency within 21 months of the finding that the defendant is incompetent to stand trial.
- 14. Allows the court to order the prosecutor to file a petition for evaluation and provide criminal history for the defendant if the defendant is remanded to the custody of DHS for civil commitment proceedings.
- 15. Provides that if the court enters an order related to commitment or the appointment of a guardian, the court may also order an assessment of the defendant's eligibility for private insurance or public benefits that may be applied to the cost of the defendant's medically necessary care.
- 16. States that the court may retain jurisdiction over the defendant until the defendant is civilly committed or a guardian is appointed.
- 17. Provides that if the defendant is remanded for civil commitment proceedings and the court is notified that the evaluation is not completed, the court must order the sheriff to take the defendant into custody to determine if either a guardian should be appointed or the charges should be dismissed without prejudice. If the defendant is out of custody, the defendant may be taken into custody for disposition.
- 18. Establishes a new article that outlines a process for the commitment, review, conditional release and discharge of persons found to be *dangerous incompetent*. This article mirrors the process used in A.R.S. Title 36, Ch. 37 for SVPs.

Review by ASH

19. Requires the psychiatrist, psychologist or other *competent professional* of ASH to examine a person committed as a dangerous incompetent annually. The annual examination report must:
  - a. Be submitted to the court; and
  - b. State the treatment and education received by the person, along with a prognosis and determination of whether the person is still dangerous.
20. Requires the court to hold a hearing to determine if a person is competent or no longer *dangerous* if the provider submits a report indicating the person is either.
21. Requires the report to include whether the defendant will continue to take medication if the person is no longer *dangerous* in whole or part because the person is taking medication. The report must also include if the person would comply with release conditions associated with a less restrictive alternative.
22. Requires the court to hold the hearing within 45 days of receiving the report. Outlines the process for the hearing and places the burden on the state for proving by clear and convincing evidence that:
  - a. The person's mental illness, defect or disability has not changed; and
  - b. The person remains *dangerous* or is competent to stand trial.
23. Outlines the following disposition options:
  - a. The court finds the person has been restored to competency. In that case, the court must order that criminal proceedings resume.
  - b. The court finds that the person has not been restored and:
    - i. The person is not *dangerous*. In this case, the person must be either referred for civil commitment proceedings, have a guardian appointed or be released from custody with charges dismissed.
    - ii. The person is not *dangerous* in whole or part due to taking medication. In this case, the court may release the person to a less restrictive alternative.
  - c. The person is *dangerous*. In this case, the person must remain committed.

Petition for Conditional Release to a Less-Restrictive Alternative (Conditional Release)

24. Permits a person to petition the court for conditional release, if the ASH Superintendent or the Director determines that the person is no longer *dangerous*. Outlines the process for the petition and requires the court to hold the hearing on the petition within 45 days. Places the burden on the state to prove by clear and convincing evidence that the person remains *dangerous* if conditionally released or unconditionally discharged.
25. Permits the person to be present at the hearing.
26. Allows the prosecuting agency to request that the person be examined by a *competent professional* selected by the agency and permits the person to retain a *competent professional*.
27. Continues to allow the person to have the option to annually petition for conditional release without the Director's or Superintendent's approval. Requires the Director to provide annual written notice of the person's right to petition and requires the notice to include a waiver of rights. Requires both to be submitted to the court in the annual examination report.
28. Includes specific findings that the court must make prior to ordering that a person be conditionally released.

29. States that if the court finds no legally sufficient evidentiary basis to conclude that specific findings related to the conditional release are met, the court must grant the state's motion.
30. Provides that if the court determines that conditional release is in the best interest of the person and adequately protects the community, the court must enter the judgment and order the person conditionally released.
  - a. If the person doesn't meet the standard for conditional release due to the effect of treatment or habilitation, the court may deny the petition unless the court finds by preponderance of evidence that the person will continue to receive the services. In this situation, the court may order the conditional release and may also revoke it if the person fails to receive the treatment.
  - b. The court may impose additional conditions on the release.
  - c. If the court finds that conditions do not exist that ensure compliance and protect the community, the court must remand the person back to the custody of ASH.
31. Requires the treatment provider to agree in writing to provide treatment.
32. Outlines conditions that the court may impose as a condition of release. Requires the court to provide a copy of the conditions to the person and to any designated service provider.
33. Requires the court to include as a condition of release that a person must submit to 90 days of inpatient evaluation at ASH. Permits the evaluation period to be reduced at the discretion of the Superintendent.
34. Requires the court to include as a condition of release that the person participate in outpatient treatment and allows the use of electronic monitoring.
35. Requires the designated service provider to submit a report every month or as otherwise directed by the court indicating whether the person is complying with terms of release. Outlines who must receive a copy of the report.
36. States that the court must review the case of each person on conditional release within one year of release and on motion of either party, the court or the Superintendent after the first year. Outlines the review considerations.
37. Requires DHS to notify the Department of Public Safety on the conditional release or discharge of a person if the person is required to be notified to the community as a sex offender.
38. States that a person who is committed as *dangerous* or who is conditionally released:
  - a. Does not forfeit any legal rights.
  - b. Shall receive care, supervision or treatment.
  - c. Is not prohibited from exercising any right available to obtain release.
39. Requires the Superintendent to keep all patient records and establishes who may receive patient records.
40. States that the personal property of a person must be inventoried and safeguarded by the person in charge of the facility that the person is detained by or transferred to. Outlines who may inspect the property and limits on the disclosure of the contents of the inventory.
41. Prohibits the conditional release of an indigent person without suitable clothing.
42. Requires the Superintendent to provide the person with up to \$50 on release ([A.R.S. § 31-228](#)).

43. Provides a process for revoking a person's conditional release.

Discharge

44. Permits a person to petition the court for discharge if the Superintendent or Director determines that the person's mental illness, defect or disability has changed and the person is no longer *dangerous*. Outlines the process for the court to make the determination, including requiring the court to hold a hearing within 45 days and permitting the person to be present at the hearing.
45. Requires the state to prove beyond a reasonable doubt that the person's mental illness, defect or disability has not changed and the person:
- a. Remains a danger to others; and
  - b. Is likely to engage in acts that are a danger to public safety if discharged.
46. Outlines the circumstances under which a person may be transported from ASH for court proceedings. Clarifies that this does not preclude hearings from being held at ASH or through electronic means of communication.
47. Makes DHS responsible for transporting a person to and from a medical facility. Permits DHS to determine the method of transport and security, but requires DHS to consider public safety.
48. States that DHS and any county sheriff are immune from liability for good faith acts related to *dangerous incompetent* defendants.
49. Requires the court to adopt rules for the conduct of *dangerous incompetent* hearings.
50. Defines *competent professional*, *dangerous*, *dangerous incompetent*, *less restrictive alternative*, *secure mental health facility*, *responsible relative* and *mental illness, defect or disability*.

***Sexually Violent Persons (SVP)***

51. Permits the court to order a screening of a defendant to determine if the defendant is a SVP if:
- a. The defendant is charged with a sexually violent offense;
  - b. The county attorney requests a screening; and
  - c. The person is being evaluated in to determine if competency to stand trial.
52. Requires at least one of the mental health experts appointed to examine the defendant to be a *competent professional* as defined in the SVP statute (A.R.S. § 36-3701) if the court has ordered a screening to determine if the defendant is a SVP.
53. States that if the defendant is determined to be not restorable to competency within 21 months, the expert must determine if the defendant may be an SVP.
54. Requires a mental health expert who has determined that a defendant may be an SVP to provide the report to the prosecuting agency for purposes of filing a petition for commitment.
55. Expands the definition of an *agency* in A.R.S. Title 36, Chapter 37 relating to SVPs to include other mental health treatment agencies in addition to ASH.

***Court-Ordered Treatment/Civil Commitment***

Evaluation of a Person Incompetent to Stand Trial

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56. States that a prescreening is not necessary if a petition for court-ordered evaluation is filed by a prosecutor on a finding that the defendant is incompetent to stand trial.
57. Requires a petition for evaluation filed by a prosecutor to include any known *criminal history*, including whether the proposed patient has ever been found incompetent to stand trial.
58. States that if the person is determined not to need an evaluation, the person must be remanded for disposition.
59. Requires the evaluation to be completed within 72 hours of the person being delivered to the evaluation agency.
60. Requires the court and prosecuting agency to receive notice of the expiration of an order for evaluation.
61. Permits the court to enter orders for further disposition, including orders that the person be taken into custody.
62. Provides that if the evaluation order expires, it does not prevent another person from initiating another evaluation of the person.
63. Requires the medical director of an evaluation agency to provide notice within 24 hours to the court and the prosecuting agency of the intent to release a person if further evaluation is not appropriate in the opinion of the medical director. The court:
  - a. May order that the person return to custody for disposition, upon release; and
  - b. Must order the medical director to provide patient records to the court and prosecuting agency.
64. Requires a petition for court-ordered treatment filed by a prosecutor to include known *criminal history*.

### Court-Ordered Treatment

65. Provides that if a patient is admitted for voluntary treatment or before a patient is discharged, the medical director must notify the prosecuting agency.
  - a. The prosecutor may request a hearing to determine if the person should be returned to custody for a disposition.
  - b. The court must order the medical director to provide patient records to the court and the prosecuting agency.
66. Allows the court to order a medical director to provide notice to the court of any noncompliance with the terms of a treatment order, if the person is subject to court-ordered treatment.
67. Permits the court on its own motion to determine that a patient is not complying with the terms of an outpatient treatment order. Current law provides this option on motion by the medical director of the patient's outpatient treatment facility.
68. Permits the court on its own motion to authorize and direct a peace officer to take a patient into protective custody and transport the patient for inpatient treatment, if a patient refuses to comply with an amended order for inpatient treatment. An amended order arises from a situation where the court determines that the patient is not complying with the terms of the outpatient treatment order and may include ordering the patient to inpatient treatment.
69. States that an order, authorization or directive to a peace officer must include:

- a. The patient's *criminal history*; and
  - b. The name and phone numbers of the patient's:
    - i. Case manager;
    - ii. Guardian;
    - iii. Spouse;
    - iv. Next of kin; or
    - v. Significant other, as applicable.
70. Provides that if the court does not find a person to be in need of court-ordered treatment, the court must notify the prosecuting agency. Requires the person to be remanded to the sheriff's custody for disposition.
71. Provides that the written outpatient treatment plan included in an order for conditional outpatient treatment that is issued by a medical director must include any provisions that the medical director or court believe are necessary to protect the well-being of the patient and the public.
72. Allows the court to order that the medical director provide notice to the court of specific instances of noncompliance, as specified by the court.
73. Requires copies of any subsequent order and amended outpatient treatment plan to be provided to the prosecutor.
74. States that if the medical director rescinds an order for conditional outpatient treatment and orders the patient to return to a mental health treatment agency, the medical director must provide notice to the court and the prosecuting agency.
75. Requires the medical director to provide notice to the court before releasing a person who was found to be a danger to others for outpatient treatment.
76. Allows a person subject to court-ordered treatment who has a grave disability or a persistent or acute disability to be released from inpatient treatment when, in the opinion of the medical director, the level of care offered by the agency is no longer required.
77. Permits the patient to agree to continue treatment voluntarily.
78. Requires the medical director to arrange for an appropriate alternative placement prior to release.
79. Prohibits the release of a person subject to court-ordered treatment who was found incompetent to stand trial prior to the expiration of the treatment period ordered by the court, unless notice is provided by the medical director. Requires notification to the prosecuting agency and the court if a civil commitment order expires or is terminated, or if the patient is discharged to outpatient treatment.
80. Extends pre-release and pre-discharge notice provisions for victims, relatives and other persons to patients who are subject to court-ordered treatment and who have been found incompetent to stand trial.
81. Requires the court to order the medical director to provide patient records to the court and prosecuting agency if a hearing is held to determine if the standard for release of the patient has been met.
82. States that a patient subject to court-ordered treatment is not discharged at the end of the treatment period if an application for continued court-ordered treatment is granted.

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- 83. Requires a patient to comply with the discharge statute requirements prior to discharge, if the discharge is the result of the medical director deciding not to file a new petition for court-ordered evaluation, court-ordered treatment or a continuation of the previous court-ordered treatment.
- 84. States that the evaluation or treatment agency may apply to the court for a warrant or court order to take a patient who is absent from evaluation or treatment into custody to bring the patient back to the agency.
- 85. Defines *criminal history* and *prosecuting agency*.

### Absence from Court-Ordered Treatment

- 86. Requires the court to confirm the tolling of the resumption of the period of court-ordered treatment in a court order after a petition has been filed by the treatment agency.
  - a. Notice and the opportunity to appear must be provided for the patient by regular mail and the patient's last known address.
  - b. Notice of the petition must be provided to the prosecuting agency if the patient was found incompetent to stand trial.
- 87. Tolls the period of court-ordered treatment during the unauthorized absence of a patient, if the court confirms the tolling.
- 88. Permits a patient whose treatment is tolled for at least 60 days to request judicial review on return to treatment.
- 89. Requires the treatment agency to make active and diligent efforts to find and return the patient to treatment during the tolled period. The agency must file a report of its efforts at least once every 60 days or as often as ordered by the court.
- 90. Permits the court to terminate the treatment order after 180 days of tolling, if specific conditions are met and notice is provided to the prosecuting agency.
- 91. Prohibits tolling court-ordered treatment for more than 365 days.
- 92. Relieves the treatment agency from liability for any damages that result from the action of a patient during a court-ordered tolling period if the treatment agency followed the requirements and process outlined in law in good faith.
- 93. Defines *absent without proper authorization* and *unauthorized absence*.

### *Miscellaneous*

- 94. Contains a delayed effective date of January 1, 2017.

### CURRENT LAW

A.R.S. Title 13, Chapter 41 outlines the process for determining that a defendant is incompetent to stand trial. A.R.S. 13-4501 states that *incompetent to stand trial* means that, as a result of a mental illness, defect or disability, a defendant is unable to understand the nature and object of the proceeding or to assist the defendant's defense. The presence of a mental illness, defect or disability alone is not grounds for finding a defendant incompetent to stand trial. This determination is different from finding a defendant *guilty except insane*

If the court finds a defendant incompetent to stand trial and finds that there is no substantial probability that the defendant will regain competency within 21 months of the finding, a party may request that the court:



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- Remand the defendant to the custody of DHS for civil commitment proceedings under A.R.S. Title 36, Chapter 5;
- Appoint a guardian; or
- Release the defendant from custody and dismiss the charges without prejudice.

A.R.S. Title 36, Chapter 5, Articles 4 and 5 outline the process for evaluating a person and seeking civil commitment for purposes of court-ordered mental health treatment. Under A.R.S. 36-250, any responsible person can apply for a court-ordered evaluation of a person who is alleged to be:

- A danger to self or to others; or
- A person with a persistent or acute disability or grave disability; and who
- Is unwilling or unable to undergo a voluntary evaluation.

The application is provided to a screening agency, which must provide a pre-petition screening within 48 hours. From the pre-petition screening, the agency completes a report of opinions and conclusions. If the report indicates that there is reasonable cause to believe the patient meets the criteria above, the agency is required to file a petition for a court-ordered evaluation of the person. If after evaluation, the court finds by clear and convincing evidence that the patient meets the criteria above, the court must order the patient in to one of the following:

- Outpatient treatment;
- Combined inpatient and outpatient treatment; or
- Inpatient treatment in a mental health treatment agency or in a hospital.

The court must consider all available and appropriate alternatives for treatment and patient care and must order the least restrictive treatment alternative available.

More information about the civil commitment process can be found [here](#).